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CONTENTS

EDITORIAL 665
CURRENT TOPICS : The Stock Exchange : Commission Sharing —Registration of Local Land Charges—Age Limit for Directors : Contracting Out—The Expert Witness—Tribunals of Inquiry .. 666
THE LEGAL AID AND ADVICE BILL 667
THE TOWN AND COUNTRY PLANNING ACT, 1947 669
DIVORCE : WHO DECIDES WHERE THE MATRIMONIAL HOME IS TO BE ? 670
PRESUMPTION THAT WOMAN IS PAST AGE OF CHILD-BEARING 671
DEATH OF PROTECTED TENANT 672
THE DUKE AND THE DUCK 673
NOTES OF CASES—
Bennett and Partners *v.* Millet 675
Christopher, E., & Co. *v.* Essig 675
NOTES OF CASES—*continued*
Fraser, D. R., & Co., Ltd. *v.* Minister of National Revenue .. 673
Gillson, deceased, *In re* ; Ellis *v.* Leader 674
Gillson, deceased, *In re* ; Ellis *v.* Leader—Practice Note .. 674
Jeeves, deceased, *In re* ; Morris-Williams *v.* Haylett 675
Lewis, Edward, H. & Son, Ltd. *v.* Morelli and Another 674
Mayo *v.* Mayo 676
Smith and Others *v.* River Douglas Catchment Board 675
Stokes *v.* Stokes—Practice Note 676
Tucker *v.* Tucker 676
Walter's Will Trusts, *In re* ; Stuart *v.* Pitman 674
PARLIAMENTARY NEWS 676
RECENT LEGISLATION 678
TO-DAY AND YESTERDAY 678
NOTES AND NEWS 678
COURT PAPERS 678

EDITORIAL

THE introduction of the Legal Aid and Advice Bill, 1948, into the House of Commons is unquestionably the legal event of the year and marks a substantial step towards the implementation of the report of the Rushcliffe Committee. A general survey of the Bill, by a member of the Council of The Law Society, appears in another part of this issue, and its outline provisions have received considerable publicity in the national Press. We may therefore turn for a moment to its domestic implications without laying ourselves open to a charge of undue self-interest.

As its title implies, the Bill contemplates the provision of legal aid in litigation, and legal advice on all matters affecting the citizen. Legal advice under the scheme will be oral and will be provided by solicitors employed, whole-time or part-time, by The Law Society for the purpose. The ordinary solicitor in practice will not be concerned with this part of the scheme unless he accepts part-time employment by The Law Society to carry it out. Far from imposing additional responsibilities upon him, it will relieve him of a considerable amount of unremunerated work involved in giving legal advice to the poor of his parish.

It is only in connection with legal aid in litigation (including criminal proceedings), therefore, that the Bill touches the ordinary practitioner. If he elects to have his name put upon the appropriate panel he may be selected by any person who qualifies for assistance under the Bill to conduct proceedings on that person's behalf. Thereafter he acts for his client in the normal way, and is fully responsible to the client for his actions, but he receives no payment from the client. Payment is made to the solicitor from the legal aid fund, and will consist of his disbursements and, in the county court, his taxed costs on the appropriate scale. In the High Court the solicitor will receive only 85 per cent. of his taxed profit costs. It is of interest to note that a similar principle applies to counsel, who will have no fee marked on his brief, but will receive the amount allowed as counsel's fee on taxation, in the county court, or 85 per cent. of that amount in the High Court. Financially, therefore, a solicitor acting for an assisted litigant in the county court is asked to make no sacrifice. In a sense, his position is improved, for there should be no question of his fees remaining unpaid. In the High Court he sacrifices 15 per cent. of his taxed profit costs.

The Times (20th November) describes this 15 per cent. reduction as being made " for no convincing reason." The Rushcliffe Committee appear to have thought that 30 per cent. of taxed profit costs represented a solicitor's true profit after allowing for overheads and that he should be prepared to surrender one half of his true profit. If this is, in fact, the reasoning, it is difficult to understand why the same figure was arrived at for solicitor and counsel with their relatively different overhead expenses. Another explanation sometimes advanced is that solicitors have accepted a responsibility to do a certain amount of work for poor persons without remuneration and that an all-round reduction of 15 per cent. in assisted-litigant cases corresponds to acting without remuneration in one case out of seven and being paid full scale fees in the remaining six cases. Whatever the reason, solicitors and counsel alike will be justifiably proud that the framers of the scheme have not hesitated to look to them for a material, no less than a professional, contribution to a great social advance. If sacrifice there is to be, it is one which will be made willingly once the necessity has been shown.

When the final details of the scheme and of the regulations to be made under the Bill are being worked out every effort must be made to encourage the entire profession to join and support the scheme. If the various panels are allowed to become the refuge of the unsuccessful or inexperienced in either branch of the profession all the good work already done will be thrown away. The assisted litigant should have as wide a choice of counsel and solicitor as that which is open to the private individual of reasonable means, and both the terms of the scheme and the method of its administration must be reasonably attractive to those who have to operate it. In this respect a great responsibility will fall upon the various local committees, who will be in a position to ensure that both the litigant and his advisers are given fair and understanding treatment, and that red tape is reduced to a minimum. The administration of the scheme having been entrusted to the profession itself, solicitors who serve on these committees will see that nothing is allowed to stand in the way of its success.

CURRENT TOPICS

The Stock Exchange: Commission Sharing

At the time of going to press an extraordinary general meeting of Stock Exchange members is being held to consider a resolution put forward by requisitionists concerning postponement of the operation of the new rules on sharing of commissions with agents until 1st January, 1950. If, as is expected, a poll is demanded, it will have taken place between 11.30 a.m. and 3.30 p.m. on 26th November, so that the result will probably be known by the time that the JOURNAL is in the hands of readers. Every member is a "proprietor" under the rules and is thereby entitled to one vote, which he may exercise by proxy. Under these circumstances we shall not even venture to prophesy that the voting will be close, although that is the general expectation. As we have stated more than once before, the final issue will materially affect the earnings of individual members as much as, if not more than, it affects the solicitors, bankers and other agents who at present share the commissions of proprietors, and the fact of the requisition taken by itself is evidence that this is realised by the brokers and jobbers. The cases on both sides have been exhaustively argued. Members received as recently as 18th November two letters arguing the respective cases, and at the same time the Council of the Stock Exchange issued the text of correspondence between the banks and the Stock Exchange. The banks intend to increase their charges as from 1st January, 1949, if the Stock Exchange decides to bring the new rules into operation on that date and thereby cause the banks an estimated loss of £80,000 a year. Whatever they decide, members will have acted with full knowledge of what is at stake.

Registration of Local Land Charges

THE Local Land Charges (Amendment No. 2) Rules, 1948 (S.I. 1948 No. 2471 (L.28)), made on 13th November and coming into operation on 30th November, 1948, amend and clarify the Local Land Charges Rules, 1934, and provide for the registration in Pt. III of the local land charges registers of charges created by the combined operation of ss. 76, 77 and 78 of the Town and Country Planning Act, 1947 (and regulations made thereunder), and the Acts relating to previous planning control as defined in the rules. Charges which are now included in the definition of planning charges and which are already registered in Pts. III or IV of any register need not be re-registered. The rules also provide for registration in the registers of county councils or county borough councils of rights conferred by s. 12 of the Requisitioned Land and War Works Act, 1948 (in respect of Government oil pipe lines). The fee order contained in the Second Schedule to the principal rules is also amended to prescribe fees for the registration of the charges to which the new rules relate.

Age Limit for Directors: Contracting Out

THE age-long conflict between youthful enterprise and the wisdom and experience of elders has been partially solved in the Companies Act, 1948, by giving companies a sort of local option to contract out of the provision for retirement of directors at seventy years of age. To contract out or not to contract out must depend on individual circumstances. Mr. ALFRED READ, who is secretary of Powell Duffryn, Ltd., and a member of the Board of Trade consultative committee on the administration of the Companies Act, said in an address to the Chartered Institute of Secretaries on 16th November: "When it is decided to have new articles, a point of principle which the company will have to decide is whether the articles should exclude the age limit on directors imposed by s. 185. The section imposes an age limit of seventy on directors of public companies and their subsidiaries, but allows a company to 'contract out' by an appropriate provision in its articles, either by prescribing some other age limit or by expressly providing that no age limit shall apply. Even when the age limit does apply to a company, a director over seventy may be appointed or retained in office by a resolution in general meeting, of which special notice, specifying his age, has been given. My own opinion is that, in order to avoid adverse comment and criticism, it is preferable to rely on this, rather than contract out of the section altogether. Another reason is that cases may arise where s. 185 will be of value in securing the retirement of a director who, without himself realising it, has reached an age when, in fairness to the business, he ought to rest on his laurels." Save in exceptional cases where one outstanding personality is the basis of the company's goodwill, this advice seems sensible and in accordance with the spirit of the Act.

The Expert Witness

SIR ARTHUR CUTFORTH, C.B.E., F.C.A., in the second of a series of articles on "The Expert Witness," in the *Accountant* of 20th November, gave good advice to those who might be subject to the ordeal of cross-examination on their special field of skill, and incidentally made observations which will be useful to those advocates who have to cross-examine the experts. His most useful remark was his criticism of the advocate who appears to the uninitiated to have scored a great success by a fierce attack on a witness. This, he said, may by no means be the case. "The judge, be it remembered, has been a successful counsel in his day, and he quickly sees through the 'tricks of the trade'." This is true, provided that the "tricks" are the ordinary drawing of attention to minor and not highly material contradictions in a witness's evidence. There are, however, tests of a witness's evidence which the judge does not despise however familiar with them he may be. The main example which Sir Arthur Cutforth gave bore this out. A witness gave evidence that an undertaking had been maintained out of revenue in a proper state of repair. Cross-examining counsel demolished his evidence by asking him whether, within six weeks of his giving similar evidence in a previous case, the whole of the outer wall of the harbour to which he had referred slipped into the sea. An example of ill-advised cross-examination concerned a barrister who cross-examined Sir Arthur himself on general principles which he had previously laid down in a lecture to students. As may be expected, Sir Arthur emerged triumphant.

Tribunals of Inquiry

WHEN all has been said on both sides of the question whether tribunals of inquiry under the Tribunals of Inquiry (Evidence) Act, 1921, ought to be instituted, the broadcasting through the Press and elsewhere of hearsay—sometimes remotely hearsay—evidence, and even comment on the demeanour of witnesses in answering questions which could not be put in a court of law, must have undesirable results. We are tempted to quote from "Alice in Wonderland," as Lord Atkin did in the leading case of *Liversidge* v. *Anderson* from another part of the same work:—

> "They told me you had been to her,
> And mentioned me to him:
> She gave me a good character,
> But said I could not swim.
>
> I gave her one, they gave him two,
> You gave us three or more;
> They all returned from him to you,
> Though they were mine before.
>
> If I or she should chance to be
> Involved in this affair,
> He trusts to you to set them free,
> Exactly as we were."

We say no more, for fear it should be wrongly thought that we refer to any particular inquiry. Suffice it to say that the arguments both for and against these statutory inquiries were recently ably set forth by Mr. RAYMOND BLACKBURN, M.P., in the House, and by "A Barrister" in the *Observer* of 21st November.

THE LEGAL AID AND ADVICE BILL

Speaking at The Law Society's Provincial Meeting at Brighton recently, the President, Mr. W. Alan Gillett, said the Legal Aid Scheme "will provide great benefits for the public and reasonable remuneration for the lawyers who are working it, but it will need the united and whole-hearted support of all members of our profession, if it is to be the success which we hope it will be . . . At no time in the history of our profession have greater opportunities opened to us for rendering effective service to the people of this land."

The following notes on the Bill have been written by a Member of the Council of The Law Society.

ON 25th May, 1944, Viscount Simon appointed a departmental committee under the chairmanship of Lord Rushcliffe, to inquire into existing facilities for legal advice and legal aid for those who could not afford to pay for those things in the ordinary way, and to make such recommendations as appeared desirable for the purpose of securing that legal aid and legal advice were available to such people.

That committee submitted a unanimous report in May, 1945, and the Legal Aid and Advice Bill which the Attorney-General introduced on 18th November, 1948, in the House of Commons, closely follows that report.

Legal aid in criminal matters is dealt with by Pt. II of the Bill. Legal aid in other matters, including legal aid in civil matters dealt with by courts with criminal jurisdiction (e.g., bastardy cases under the Summary Jurisdiction (Married Women) Acts, guardianship of infants) is dealt with by Pt. I.

LEGAL AID IN NON-CRIMINAL MATTERS

Who is entitled to legal aid

Any person whose "disposable income" does not exceed £420 a year can apply for legal aid under Pt. I. A person's disposable income is his income after making such deductions as may be prescribed in respect of the maintenance of dependants, interest on loans, income tax, rates, rent and other matters for which the person in question must or reasonably may provide, and such further allowances as may be prescribed to take account of the nature of his resources. It is calculated that some people with gross income up to £750 a year will be entitled to the benefits proposed by the Bill.

Income alone is the test for eligibility to legal aid, but it can be refused to a person whose disposable capital exceeds £500.

Persons receiving legal aid will be required to contribute towards the cost according to their means. The method of calculating the amount of contribution is laid down by the Bill.

The assessment of disposable income and disposable capital and the maximum amount of contribution will be determined by the National Assistance Board. It is certain that that will be a matter of satisfaction to those who have had experience of determining means under the existing Poor Persons Rules.

In what courts and in what matters will legal aid be granted

Unless and until regulations otherwise provide, legal aid will be given in proceedings in any of the following :—

(1) (*a*) The House of Lords in the exercise of its jurisdiction in relation to appeals from courts in England.
(*b*) The Judicial Committee of the Privy Council.
(*c*) The Supreme Court of Judicature.
(*d*) The Chancery Court of the County Palatine of Lancaster.
(*e*) The Chancery Court of the County Palatine of Durham.
(*f*) The Liverpool Court of Passage.
(*g*) The Court of Record for the Hundred of Salford in the County of Lancaster.
(*h*) Any county court.
(*i*) The Mayor's and City of London Court.
(*j*) Any court of quarter sessions.
(*k*) Any court of summary jurisdiction.

(2) Proceedings before any person to whom a case is referred in whole or in part by any of the said courts.

(3) Proceedings before a coroner.

(4) Proceedings before a sheriff under a writ of *elegit* or writ of inquiry.

But not in the following matters :—

(1) Proceedings wholly or partly in respect of—
(*a*) defamation ;
(*b*) breach of promise of marriage ;
(*c*) the loss of the services of a woman or girl in consequence of her rape or seduction ;
(*d*) the inducement of one spouse to leave or remain apart from the other.

(2) Relator actions.

(3) Proceedings for the recovery of a penalty where the proceedings may be taken by any person and the whole or part of the penalty is payable to the person taking the proceedings.

(4) In the county court, proceedings for or consequent on the issue of a judgment summons and, in the case of a defendant, proceedings consequent on the issue of a default summons where he does not dispute the claim or make a counter-claim.

Many readers will recollect that the Rushcliffe Committee recommended that legal aid should be given in cases coming before any tribunal where audience is normally granted to barristers and solicitors. The Bill does not extend to these tribunals, but there is power for the Lord Chancellor to include them by regulation, and no doubt he will exercise that power if the need to do so becomes manifest. There are those who think that libel should not be excluded, but here, again, if experience shows that hardship results from its exclusion the Lord Chancellor could and probably would revoke the exclusion by regulation.

Administration

The Bill places upon The Law Society the responsibility for the administration of Pt. I of the Bill.

A scheme has to be made, and may be varied from time to time, by a committee of The Law Society, which will include persons nominated by the General Council of the Bar. This scheme will need the approval of the Lord Chancellor and the concurrence of the Treasury and will provide the machinery through which the Act will work.

Area committees and local committees will be set up under this scheme.

What happens when legal aid is granted

Even though he is within the financial limit imposed by the Bill a person can only obtain legal aid if he can show that he has "reasonable grounds for taking, defending, or being a party" to proceedings. Upon that matter he will have to satisfy the local committee. If he is granted legal aid he will be able to select his own solicitor (providing that solicitor is on the appropriate panel of solicitors) and thereupon the relationship of solicitor and client will be established, and the matter will be conducted in the same way as any other matter, except that the scheme will certainly contain provisions aimed at keeping down certain expenses (e.g., not more than one counsel will be employed without the prior approval of the area committee ; the limitation of the number and fees of expert witnesses).

What remuneration will be paid

In cases in the House of Lords and the Supreme Court solicitors will be paid disbursements in full and 85 per cent. of costs, taxed on a solicitor and client basis, and counsel will

be paid 85 per cent. of the fees allowed counsel on taxation. In the county court full costs and fees will be paid. In this connection it should be stressed that the Rushcliffe Committee recommended that there should be a new county court scale providing reasonable remuneration, and that recommendation has not been overlooked.

In other cases (i.e., coroners' courts, and civil cases before courts of criminal jurisdiction) costs will be determined in a manner to be prescribed. It is not known what that manner will be, but as the Rushcliffe Committee recommended that the area committee should assess costs in cases where there was no established method of taxation, it may be that this duty will be placed on the area committee.

All disbursements and remuneration paid to solicitors and all fees paid to counsel will be paid from the legal aid fund, and neither solicitor nor counsel will be entitled to receive any payments in addition to those made from the legal aid fund.

Legal advice

Legal advice, consisting of oral advice on legal questions and help in preparing an application for legal aid, is to be available for any person in England and Wales, and, outside Great Britain, for members of the forces.

To provide this The Law Society can employ solicitors on either a whole-time or a part-time basis.

There will be no means test for those who seek legal advice, but the advice solicitor can refuse to advise if he is satisfied that the seeker after such advice can afford to obtain it in the ordinary way. A fee of 2s. 6d. or such other fee as may be prescribed can be charged for each interview. It is thought that regulations will provide that the whole or part of the fee may be remitted in suitable cases. All fees paid will go to the legal aid fund.

Out of the twenty-one clauses of the Bill, only one deals with legal advice. All those who have had experience of poor man's lawyers, and so know what comfort and peace of mind legal advice often gives to the recipient, will think that that clause is one of the most important in the Bill. The organisation to provide that advice will be large, and the responsibility on The Law Society heavy, but the benefits, especially to those who are poor or not so well educated as others, that can flow from such a legal advice system should amply justify the organisation and make the profession proud to shoulder the responsibility.

The provision of legal advice for members of the forces overseas will involve the setting up of advice centres in certain other countries where forces are stationed.

Finance

A legal aid fund is to be established by The Law Society. The fund will be fed by contributions from assisted persons, fees received for giving advice, costs recovered and money provided by the Lord Chancellor. All expenses (i.e., costs of administration, costs of providing legal advice, disbursements, counsel's fees and solicitors' remuneration) will be paid from the fund, and the general funds of The Law Society will be indemnified against any liability in respect of those expenses.

From time to time The Law Society will submit to the Lord Chancellor estimates of the money they will need. In time, no doubt, the area committees will be required to submit their estimates to the Council.

The accounts are to be audited by qualified accountants appointed yearly by the Lord Chancellor.

Advisory committee

Those who will be responsible for the administration of the scheme will be lawyers. It is right that the lay viewpoint should be available for the Lord Chancellor at all times, and so the Bill provides that his lordship shall constitute an advisory committee to advise him on questions relating to Pt. I of the Bill. The members of this committee are to be appointed " with regard to their knowledge of legal procedure and social conditions."

An enormous amount of thought has gone to this Bill, but in spite of that it cannot be expected that the Bill, the first regulations by the Lord Chancellor, and the scheme to be prepared by The Law Society will prove to be perfect. Experience will most certainly show that alterations are needed and the help of the advisory committee should be valuable to the Lord Chancellor in determining what alterations shall be made.

Legal Aid in Criminal Matters

The Bill follows the recommendation of the Rushcliffe Committee in that legal aid in criminal cases will continue to be given under the Poor Prisoners Defence Act of 1930, and the Summary Jurisdiction (Appeals) Act, 1933, but with differences.

The 1930 Act provides that legal aid before courts of summary jurisdiction shall be granted " if it appears to a court of summary jurisdiction or examining justices that the means of any person charged before them with any offence are insufficient to enable him to obtain legal aid," and that by reason of the gravity of the charge or of the exceptional circumstances it is desirable in the interests of justice he should have free legal aid in the preparation and conduct of his defence. The words " by reason of the gravity of the charge or of the exceptional circumstances " are to be repealed by the Legal Aid and Advice Bill, and where there is a doubt whether a defendant's means are sufficient for him to obtain legal aid or whether the grant of a certificate is desirable in the interests of justice the doubt shall be resolved in favour of granting free legal aid. Similar lines are followed in respect of defence and appeal aid certificates.

The wording of the 1930 Act was such that many justices quite honestly thought that in many cases where the man in the street felt free legal aid ought to be granted they were precluded from granting it. This should be changed now.

There are changes in the method of applying for a certificate, and the costs of giving free legal aid in criminal matters will be borne by the Exchequer and not by local funds.

The remuneration in cases undertaken under the Poor Prisoners Defence Act, 1930, and under the Summary Jurisdiction (Appeals) Act, 1933, has been poor. Because of this a clerk to the justices often had difficulty in finding a solicitor willing to, accept a certificate, and the solicitor accepting the certificate was heavily out of pocket except in a most straightforward case. Large numbers of solicitors, and indeed barristers, were heavily out of pocket.

Those readers who undertake defences in criminal courts and who read the Bill may be disappointed to see no reference is made to remuneration, except in cl. 16 (5) of the Bill. Remuneration under the Acts of 1930 and 1933 is fixed by rule, and an alteration in those rules can be effected without amending the Acts. It is certain that in future the number of certificates granted will be greatly in excess of those granted in the past, and in the interest of justice it is right that that should be so. It is equally certain that solicitors could not undertake the increased work without proper remuneration. That fact is realised by the authorities.

While the administration of free legal aid in criminal courts (except in quasi-civil cases) is not to be in the hands of The Law Society, it is hoped that all solicitors with the requisite experience will be ready to accept certificates under the 1930 and 1933 Acts and give of their best.

A meeting of the United Law Society was held in the Barristers' Refreshment Room, Lincoln's Inn, on Monday, 8th November. Mr. O. T. Hill was in the chair. The motion " That this house regrets that broadcasting in this country is a monopoly " was rejected by two votes. At the next meeting, on Monday, 15th November, 1948, the motion " That the case of *Hannah* v. *Peel* [1945] K.B. 509 was wrongly decided "was carried by two votes.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, 16th December, 1948, at 10 a.m.

THE TOWN AND COUNTRY PLANNING ACT, 1947: PRACTICAL POINTS

SUFFICIENT time has now elapsed since the Town and Country Planning Act, 1947, came into operation on the 1st July last to enable comments to be made on cases observed in practice.

There is a school of thought, and it is by no means a small one, which regards planning as having come into being on 1st July. Members of this school confine their attention to verifying that property, in respect of which they are acting for purchasers, is in the same condition and is being used for the same purpose as on 1st July. Nothing could be more dangerous. After the fashion of a Chancellor of the Exchequer, part of what the 1947 Act gave with one hand, by repealing all the previous planning legislation, it took away with the other, by s. 75 (Existing development contravening previous planning control) and s. 76 (Existing development authorised subject to conditions). In recent months the words "existing use" have appeared in print and speech with little intermission; before, they were confined to a small circle, and yet, while there is no definition of the phrase in the 1947 Act, a lengthy definition will be found in the Town and Country Planning Act, 1932. Those readers who read Part I of the article on the effect of the 1947 Act on conveyancing, at 92 SOL. J. 447, will know that this Act introduced little that was new in the control of land use.

It is most important to realise that purchasers' solicitors should investigate not only the title to the land but also the planning history of the land.

Here we come to the difficulties of the wiser school of thought who appreciate that previous planning history is vital. How are they to set about investigating it? To ask a local authority if a particular property and its use comply with planning law will, if it produces an answer at all, in most cases produce an unsatisfactory one and one which is accompanied by a disclaimer of any responsibility for its accuracy. To answer such a question properly the property would have to be inspected and its history looked into by officers of the authority, and authorities simply have not got the staff to carry out the work. It is proposed, therefore, to set out a few cardinal rules to assist readers with this investigation. First, however, it must be borne in mind that previous planning law had two branches, namely (1) the Town and Country Planning Acts and (2) the Restriction of Ribbon Development Acts, both of which must be complied with. To take the first branch first:—

(1) The *material* date from which the investigation must start is the date of the resolution to prepare a planning scheme. This should appear in the certificate of search in the local land charges register of the county borough or county district council concerned. If it does not, a specific question as to the date should be put to the authority concerned, for such a resolution was effective in every area in England and Wales. This date may even be before 1932, for the 1932 Act was not the start of planning legislation.

(2) The purchaser's adviser must then ask himself: Has any building, structure or erection been put up on the property or has there been any change of use since the material date? This question can often be answered from a perusal of the parcels in the title deeds and their plans, by inspection of the property, and by inquiry of the vendor, though undue reliance should not be placed on the latter.

(3) If the answer to the last question is "Yes" (or if there is reasonable doubt as to what the answer should be), the purchaser must ask for the interim development permission which was necessary for the operation or change of use. In the first place he should ask the vendor for this. If planning had received the attention it deserved before the 1947 Act, these permissions would have been kept with the title deeds, but unfortunately this was the exception rather than the rule. If the vendor is unable to produce the permission, the local authority concerned should be asked to say whether a permission was granted for the particular operation or change of use and upon what conditions, and to supply a copy. It will assist if the authority can be given the approximate date.

(4) If there is no permission the operation or change of use was unauthorised and the local planning authority can take enforcement action under the 1947 Act.

The foregoing rules have purposely been kept as simple as possible and will apply to the majority of cases. The operations and changes of use which constituted development for the purpose of the 1932 Act are not in detail the same as those which constitute development for the purpose of the 1947 Act, and there is not space to discuss them here, but those interested will find it useful to study the definitions of "development," "existing building" and "existing use" in s. 53 of the 1932 Act. Where an operative planning scheme existed (this will appear from the certificate of search in the local land charges register mentioned above) the purchaser should verify that any operation or change of use conformed with the scheme or any permission under it. These schemes, however, covered comparatively few areas.

Turning now to the second branch of planning law, namely, restriction of ribbon development, the rules are as follows:—

(1) Ascertain if any part of the land was within (*a*) 220 feet of the centre of any road which was a classified road on 17th May, 1935; (*b*) 220 feet of the centre of any other road in respect of which s. 2 of the Restriction of Ribbon Development Act, 1935, was adopted by the highway authority; (*c*) standard widths adopted under s. 1 of the 1935 Act. To ascertain (*a*) inquiry should be made of the highway authority, The Law Society's current approved form of supplementary inquiry being altered to the past tense, and (*b*) and (*c*) will appear from the certificate of search in the local land charges register of the highway authority.

(2) If the land is affected, the purchaser must ask himself: Has any operation (change of use does not matter) been carried out or means of access constructed since, in case (*a*), 2nd August, 1935, or, in cases (*b*) and (*c*), the dates when the adoptions of these sections became operative? This again may be ascertained from the title deeds, inspection of the property or inquiry of the vendor.

(3) If the answer to (2) is "Yes" (or there is any reasonable doubt as to what the answer should be), the purchaser must ask for the necessary consent to be produced by the vendor. If he is unable to produce a consent, the highway authority should be asked to supply the information from the register kept under s. 7 (6) of the 1935 Act.

(4) If there is no consent the operation or access was unauthorised and the local planning authority can take enforcement action under the 1947 Act even if, in the case of an operation, there was an interim development permission under the other branch of planning law.

It remains to add that any conditions imposed on interim development permissions or ribbon development consents remain valid and are enforceable under the 1947 Act.

The foregoing rules relate only to the planning history of the property up to 1st July, 1948; the reader will be aware of the points to be investigated after this date.

There remain for consideration the cases where, by dint of the foregoing procedure, the purchaser has discovered that the vendor has a skeleton in his cupboard. Owing to the former lack of interest in planning this is by no means infrequent. If the purchaser has been wise he will not yet have entered into the contract and should arrange for the vendor to apply for planning permission in the usual way under the 1947 Act for the retention of the offending building or work, or continuance of the offending use, or himself apply (s. 75 (4)). In the case of a building or work, the vendor

should also be required to pay any development charge; but no charge is payable in respect of permission for the continuance of a use which was not authorised by previous planning law (s. 75 (7)). In the case of works or a use carried out or begun between 3rd September, 1939, and 26th March, 1946, use may be made of the Building Restrictions (War-Time Contraventions) Act, 1946. In the present sellers' market it may be that a purchaser will not be able to persuade the vendor to have matters put right but, by following the foregoing rules, the purchaser's solicitor will at least be able to calculate the risks and explain them to his client, thus avoiding difficulties at a later date.

R. N. D. H.

Divorce Law and Practice

WHO DECIDES WHERE THE MATRIMONIAL HOME IS TO BE?

For some time now and certainly since 1940, when Henn Collins, J., decided the case of *Mansey* v. *Mansey* [1940] P. 139, the view has been common amongst practitioners that the husband has the right to choose where the matrimonial home will be. Indeed, Henn Collins, J., himself used the word "dictate" in connection with the husband's rights in this respect. This rule was, of course, subject to the proviso that such dictation must not be intended to spite the wife and the accommodation offered must be such as one would expect a man in his position to occupy. Some doubt as to the absolute rights that the husband has in this respect has been cast upon this view by the recent decision of the Court of Appeal in *Dunn* v. *Dunn* [1948] 2 All E.R. 822; 92 Sol. J. 633. In this case Denning, L.J., gave another of those enlightening judgments, for which the legal profession have good reason to be grateful, and which do so much to make clear points which many of us are all too prone to overlook. He showed with great lucidity that in deciding this problem, as in so many others, the key to success was a proper understanding of where the burden of proof lay.

Dunn v. *Dunn* was an appeal by a husband from an order of Jones, J., refusing a decree of divorce on the grounds of desertion. The facts were these. The husband was in the navy and from 1937–41 he was on the China Station. On his return to England in May, 1941, and again at Christmas, 1941, he went to see his wife at their matrimonial home at Morpeth, but quarrels arose over money matters. They did not live together after 1941. After April, 1942, on a number of occasions the husband asked the wife to stay with him in England at various places where he was stationed, but she would not do so. She suffered from acute deafness which made her unhappy away from her home and among strangers, her son had started to work at Morpeth and these and other reasons might have been the cause of her refusing to join her husband, although she did not say so at the trial. Thus the husband claimed that his wife had deserted him without just cause, but Jones, J., held that in all the circumstances the wife was justified in the course she took and did not desert the husband. The Court of Appeal, by a majority, upheld this decision, Pilcher, J., dissenting.

In the argument at the hearing of this appeal counsel for the husband put forward with vigour the view that the husband was entitled to decide where the matrimonial home would be. He argued that in this case, as the husband had offered a home in rooms, which was reasonable in the prevailing war circumstances, and the wife had refused to join him, she had thereby become the deserting party as she was unable to prove that she had left the husband for just cause. In other words the husband's view was that, granted the fact of existing separation and granted that the husband had offered reasonable accommodation in good faith to the wife, then the burden of proof shifts to the wife to show if she can that there was just cause in her refusal to join him. In this case the wife herself gave no reasons for not joining the husband, one of the reasons for not giving them being that she had difficulty in communicating with the court on account of her deafness, which was acute. Jones, J., had taken the view that sufficient facts had been adduced in evidence to show that she had just cause in not joining her husband even though at no time had she said that those reasons were the reasons which had made her decide not to join him.

Denning, L.J., in giving his judgment, referred to the distinction between the legal burden of proof that rests upon a party to prove his case and what he called the provisional burden of proof that rests on one or other of the parties as a result of the state of the evidence. The learned lord justice has on previous occasions drawn our attention to this distinction, in particular in the case of *Emanuel* v. *Emanuel* [1946] P. 115 (which was discussed at 92 Sol. J. 436), where the question of the burden of proof in cases of collusion had to be decided. It will be remembered that in that case it was held that the legal burden of proof of showing that there was no collusion lay with the party presenting the petition but that in the absence of anything else he was entitled to rely on the provisional presumption of innocence. The provisional presumption of innocence might, however, be overcome by the existence of circumstances which gave rise to a suspicion of collusion, in which case the burden shifted back to the petitioner to prove no collusion. In the present case the learned lord justice pointed out that the position was somewhat similar, for here too the legal burden of proof was placed upon the petitioner. By the Matrimonial Causes Act, 1937, he must prove that his spouse had deserted him without cause for a period of not less than three years. When he had succeeded in showing that he had offered his spouse suitable accommodation which had been refused then there was no rule of law that said that he had discharged his burden of proof and that it was then up to the other party to show just cause. All that has happened when this stage of a trial is reached is that the evidence has reached a point at which the court may—but not must—infer that desertion without cause is proved in the absence of any proof of just cause from the other side. If, as happened in this case, there is some evidence that there was just cause then the court is entitled to say that the petitioner has not discharged the onus that was upon him, notwithstanding the fact that the evidence of just cause was not given by the respondent as the reason for her not having accepted his offer of accommodation. In other words, a similar position is reached to the position in *Emanuel* v. *Emanuel*, where, on a suspicion of collusion, the burden shifts back to the petitioner to prove no collusion. Here, on a suspicion of just cause, the burden would appear to shift back to the petitioner to show that there was no just cause.

The effect of this decision is clearly to alter the view prevalent amongst lawyers up till now as to the husband's right to choose the location of the matrimonial home, and in that connection the remarks of Denning, L.J., are most interesting. He said that the decision as to where the home should be affects both the spouses and their children. To use his own words: "It is their duty to decide by agreement, by give and take, and not by imposition of the will of one over the other. If such an arrangement is frustrated by the unreasonableness of one or the other and this leads to a separation between them then the party who has produced the separation by reason of his or her unreasonable conduct is guilty of desertion." The learned lord justice clearly

throws overboard by this view any idea that the husband has the casting vote. That will not produce serious results when the separation is due to the unreasonableness of one of the parties but the position is somewhat different when, as in this case, it is held that neither party acted unreasonably. For then the position is this, that you may have parties living apart and the husband offers a reasonable home which the wife reasonably refuses and so they continue to live apart, and as both parties have acted reasonably neither can obtain relief on the grounds of desertion. That is surely the worst possible result that can be obtained, for the parties remain bound by a marriage which has clearly broken down. One of the main objects of introducing desertion as a ground for divorce in 1937 was to prevent this sort of situation and the result that all too frequently followed in those days of one of the parties going through the degrading process of providing evidence of other grounds.

It may be that the present writer is viewing the possible social consequences of this decision unduly pessimistically, for it is clear that in the great majority of cases where the spouses are unable to agree on the situation of their home one or other of them will have been behaving unreasonably and so a remedy for desertion will lie, but it does seem that the results in those cases, where both sides are reasonable, may be serious, and one does not have to exercise great imagination to think of cases where for instance one party might quite reasonably insist on living in the country while the other quite reasonably insisted on living in a town. Perhaps the solution to the difficulty lies in treating the reasonable wife as a person who would put home life with her husband above all other considerations except such as are extremely grave, e.g., her health and the health of the children.

It should perhaps be noted in conclusion that although Pilcher, J., dissented from the majority judgments he agreed with Denning, L.J., on the latter's observations on the question of the burden of proof, so that as regards that point the decision was unanimous.

P. W. M.

A Conveyancer's Diary

PRESUMPTION THAT WOMAN IS PAST AGE OF CHILD-BEARING

THE principle that a beneficiary who is *sui juris* and absolutely entitled to the trust premises has the power to extinguish the trust and call upon the trustees to transfer the trust premises to himself has always been recognised in equity. The principle applies equally where a number of beneficiaries are collectively entitled, whether as tenants in common, joint tenants or in succession, provided that all agree and join in giving directions for the extinction of the trust. In general it is a *conditio sine qua non* that the beneficiaries should be absolutely entitled, and in the case of a trust for the benefit of a class, that the class should be closed when the direction for the termination of the trust is given, but the condition is relaxed in certain particular circumstances.

The circumstances in which the strict rule may be relaxed are stated as follows in Underhill on Trusts and Trustees (9th ed.), at p. 400 : even where it is not *absolutely* certain that no more beneficiaries can come into existence, but it is so morally (as, for example, when there is an alternate trust in favour of the children of a woman past the age of child-bearing), the court will, on a summons, give trustees liberty to act upon the direction of the beneficiaries *in esse*, so long as the contingent rights of living persons are not thereby prejudiced.

In present circumstances, it is often of such advantage to beneficiaries to terminate a trust and exchange a highly taxed income for a tax-free capital accretion that it may be convenient for the practitioner to have a summary of the practice in cases where, despite an ultimate trust in favour of children, a female beneficiary may be presumed to be past the age of child-bearing and so capable of putting an end to the trust. The typical trust in such cases is one where X is entitled to a fund for life, with remainder to all her children who should attain the age of twenty-one, and, if more than one, in equal shares as tenants in common ; but there are many possible variations, and the principle on which the court acts is not dependent on the exact nature of the limitations to which the trust is subject.

Prima facie in such a case there is a trust for persons in succession, and it is not strictly possible to ascertain all the persons who will become absolutely entitled until at least after the death of X. But if X is of such an age that it is physically impossible for her to have any children, or any more children, the trustees may be authorised to distribute on that footing. The age of the principal beneficiary is the cardinal point, but there is no rule of thumb which the court will apply ; each case is considered on its own circumstances, and the circumstances vary according as the beneficiary is a spinster, a widow or a married woman at the time of the application. The lower ages at which the presumption has been made, according to the more recent reported decisions, are as follows :—

(1) Spinster, age fifty-three—*Re Widdows* (1871), L.R. 11 Eq. 408. In view of this decision the doubt expressed in *Haynes* v. *Haynes* (1866), 35 L.J. Ch. 303, whether this age may not be too low, may now be regarded as without foundation.

(2) Childless widow, age fifty-five—*Re Widdows, supra.*

(3) Widows with children, age fifty-six—*Re White* [1901] 1 Ch. 570 (beneficiary had one child at the age of twenty-one, and no more children during a married life lasting thirty-four years) ; age fifty-two—*Re Thornhill* [1904] W.N. 112 (last of five children born to the beneficiary at the age of thirty, and no more children born during the following six years of married life which preceded the husband's death).

(4) Married woman, age fifty-five—*Re Widdows, supra* (beneficiary had never had any children, but no further details appear in the report) ; age forty-nine—*Re Millner* (1872), 14 Eq. 245 (beneficiary married at age of twenty-three, and had never had any children during married life which, at the date of the application, had lasted twenty-six years).

The case of *Croxton* v. *May* (1878), 9 Ch. D. 388, where the Court of Appeal refused to presume that a married woman was past the age of child-bearing at the age of fifty-four, may fairly be distinguished by reason of its own peculiar facts. The beneficiary had married at the age of thirty-seven, had separated from her husband a few months after the marriage, and had then resumed co-habitation some three years before the date of the application. She had never had any children, but the court felt difficulty in making any presumption after a married life which, in effect, had only lasted three years.

This summary of the decisions will serve as a guide to the circumstances in which an application to the court is likely to prove successful. If the beneficiary is of a lower age, payment out may sometimes be authorised subject to a policy being taken out to guard against the event of children being born (see *Carr* v. *Carr* [1912] W.N. 82). The application should be made by originating summons, preferably by the trustees, and is dealt with in chambers in the Chancery Division (R.S.C., Ord. 55, r. 2 (1)) ; and the order of the court takes the form, not of a direction to the trustees to distribute on the footing that the female beneficiary will have no children, or no more children, but of an authority so to distribute.

Underhill on Trusts and Trustees (*loc. cit.*) adds a note to the effect that " there is no reported decision as to this, but it is the well-known practice." This practice was recognised, to my own knowledge, in a recent case dealt with in chambers.

Necessary parties to an application of this nature are the female beneficiary herself and all other persons who are absolutely entitled, together with the female beneficiary, to the trust property, including the children (if any) of the beneficiary.

The practice of presuming a woman to be past the age of child-bearing is, of course, no more than a gloss on the general principle that a beneficiary or beneficiaries, being *sui juris* and absolutely entitled to trust property, may extinguish the trust. There is no room for the application of the practice where the general rule itself does not apply, e.g., where the gift is contingent, or where the trusts include a trust of the intermediate income in favour of persons not parties to the application (as to which see, for example, *Re Hocking* [1898] 2 Ch. 567). Nor, apparently, will the court make the necessary presumption where the question before the court is not the authorisation of a transfer of property to which persons are entitled in equity, but the determination of rights at law (*Re Deloitte* [1926] Ch. 56). The correctness of the last-mentioned decision was deliberately left open by the House of Lords in *Berry* v. *Geen* [1938] A.C. 575, but as far as the lower courts are concerned, it must presumably be accepted as good law.

" A B C "

Landlord and Tenant Notebook

DEATH OF PROTECTED TENANT

We are promised legislation which will dispose of the law in *Neale* v. *Del Soto* [1945] K.B. 144 (C.A.), and will at the same time provide for the fixing of standard rents of new houses otherwise than by reference to the rents at which they are first let ; but nothing is to be done, during this Parliamentary session, to clarify or change the position with regard to a number of other points on the Rent, etc., Restrictions Acts which seem sadly in need of such treatment.

Among these is the problem of the position that arises when a protected contractual tenant dies intestate. It may be remembered that the position when a protected *statutory* tenant dies was found to be anomalous : the original principal Act, the Rent and Mortgage Interest (Restrictions) Act, 1920, s. 12 (1) (*g*), dealing with devolution in its interpretation clause, said : " the expression ' tenant ' includes the widow of a tenant dying intestate who was residing with him at the time of his death, or where a tenant dying intestate leaves no widow or is a woman, such member of the tenant's family so residing," etc. An amendment made by the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 13, introduced a six months' qualifying period for relatives other than widows, but it was some time before, in consequence of some agitation, the Increase of Rent and Mortgage Interest (Restrictions) Act, 1935, was passed for the sole purpose of deleting the words " dying intestate " from the two enactments mentioned.

But various *principia divisionis* can be applied when it is desired to divide and sub-divide protected tenants and, besides carrying out the process by reference to testacy, there is a division into contractual and statutory. It was comparatively recently that the implications of this proposition were brought home to us by two decisions.

First there was *Thynne* v. *Salmon* (1948), 92 Sol. J. 83 (C.A.), in which the facts were that a tenant holding under a monthly tenancy, which had commenced in 1931 but never been determined by notice to quit or notice of increase, died intestate. Two sisters survived him ; one of them had resided with him throughout the tenancy, but it was the other who took out letters of administration and on whom the landlord served notice to quit a few weeks later. The Court of Appeal held, by a majority, that the first-mentioned sister had no right to any tenancy. The definition cited follows those contained in s. 12 (1)(*f*), by which " tenant " includes those from time to time deriving title under the original tenant : the administratrix was therefore tenant, for in s. 12 (1) (*g*) Parliament was providing only for those who could not dispose of their interests by will, and extending protection to persons who consequently needed it.

Then, in *Smith* v. *Mather* (1948), 92 Sol. J. 231 (C.A.), the defendants were the sons of a contractual tenant who had died intestate, but neither they nor anyone else had taken out letters of administration ; the landlords had, however, served notice to quit on the President of the Probate, Divorce and Admiralty Division, the " probate judge " in whom ss. 9 and 5 of the Administration of Estates Act, 1925, vest the estate of a person dying intestate until administration is granted in respect thereof. It was urged for the two sons that one difficulty freely referred to in *Thynne* v. *Salmon*, the co-existence of two tenancies, one contractual and the other statutory, did not arise, as no one had taken out a grant and the President of the Probate Division was clearly not liable for rent ; but the court held that the reasoning of the decision, restricting " tenant " in para. (*g*) to cases in which there was no right which could be transmitted by will or devolve by virtue of intestacy, governed the situation.

While there is much to be said, and indeed much was said by Bucknill, L.J., in his dissenting judgment in *Thynne* v. *Salmon*, for the view that Parliament did not intend that the death intestate of a contractual tenant should deprive his family of protection (" take the cottage out of the protection " is perhaps putting it too high : the standard rent enjoys immortality if tenant and tenancy do not), we must accept the position as laid down, though, as Tucker, L.J., observed in that case, hard cases might arise.

As an example of a hard case, the learned lord justice instanced a bequest by a tenant of the benefit of his tenancy to a mistress, though his wife was residing with him at the time of the death ; Roxburgh, J., observed on this that the shortcomings of the tenant or defects in his testamentary dispositions would be to blame, rather than the law. But this is not, of course, a case of intestacy, and in both recent decisions the landlord might be said to have derived fortuitous benefit not so much from the Increase of Rent, etc., Restrictions Acts as from the provision of the Administration of Estates Act, which merely reflects the sharing by the old civil law of nature's abhorrence of vacuity. For the " probate judge " took the place of the " ordinary " when the ecclesiastical courts were deprived of their jurisdiction in testamentary matters.

And it must not be assumed that whenever a protected contractual tenant dies intestate the landlord will be able to recover possession. Further fortuitous circumstances which may be said to have operated in the two cases discussed were that in the one letters of administration were taken out by a non-resident relative and in the other not at all. And in the former case the administratrix remained non-resident. In each case the tenancy was a periodic one, being monthly in the one and weekly in the other.

So the authorities do not cover, or it is doubtful whether they give much assistance in solving, such a problem as this : a contractual tenant dies intestate, leaving a relative who would be entitled to a statutory tenancy if the tenant had been a statutory tenant ; before the term expires (if fixed) or can be and is determined by notice, some person takes out a grant of letters of administration. It would seem that, if the term then comes to an end, the landlord's rights must depend on whether or not the person concerned is entitled to the tenancy on an intestacy ; this unless *Lawrance* v. *Hartwell* [1946] K.B. 553 (C.A.) warrants the proposition that a personal representative not beneficially entitled qualifies for

protection indefinitely. If, however, the landlord serves notice to quit determining the tenancy, or the tenancy determines by effluxion of time, before letters of administration are granted, I do not think that there is anything in the doctrine of relation back of administrators' titles which could help the administrator even if beneficially entitled (e.g., a widow whose husband left not more than £1,000). There is authority to show that the administrator may take proceedings for damage wrongfully occasioned to the estate before the grant, but there is nothing wrongful in determining a tenancy or re-entering on its determination. The nearest decision in point on which any reliance could be placed would, I believe, be *R.* v. *Horsley* (1807), 8 East 405, a settlement case: the pauper's father died in 1802, his estate including a leasehold house; she was (or was assumed to be) sole kin and beneficially entitled; but not till 1806 did she take out a grant, assigning the term a few weeks later, after which she moved. It was held that her residence as sole next of kin, entitled to a grant, had made her irremovable; but Ellenborough, C.J., considered that the actual obtaining of a grant had had no effect. The doctrine does not, as it were, enable a court to unscramble eggs.

R. B.

THE DUKE AND THE DUCK

THE history of man shows him to be a destructive brute; in the intervals between wars in which he is engaged in killing his own kind, he takes pleasure in destroying or maiming those inoffensive creatures which, in his arrogance, he has designated the "lower" animals. Even in this country, legislation to protect animals against cruelty is of comparatively recent growth; and even now wild animals generally are not within the terms of the Protection of Animals Act, 1911, and amending statutes, unless they are in captivity or close confinement.

An early pioneer in England in the campaign of humanity was the famous artist William Hogarth, who, in the introduction to his series of prints entitled "The Four Stages of Cruelty," writes in 1751 as follows:—

> "The prints were engraved with the hope of, in some degree, correcting that barbarous treatment of animals, the very sight of which renders the streets of our metropolis so distressing to every feeling mind. If they have had this effect, and checked the progress of cruelty, I am more proud of having been the author, than I should be of having painted Raffaele's cartoons."

The controversial question of vivisection was last year dealt with by the House of Lords in *National Anti-Vivisection Society* v. *C.I.R.* (1947), 63 T.L.R. 424, where, despite the doughty efforts of Lord Porter, the cause of the anti-vivisectionists suffered a serious defeat.

From the humanitarian point of view it may appear unfortunate that, whenever the interests of animal welfare come into conflict with those of the human pursuit of science, or even of sport, the courts in this country are apt to show a bias in favour of the latter.

In the recent case of *Hamps* v. *Darby* (1948), 64 T.L.R. 440, the Court of Appeal has, it is true, expressed its disapproval of the shooting by the defendant of five homing pigeons, even though they were feeding upon his growing crops; but the decision appears to have turned solely upon the right of the plaintiff to retain possession of the birds, which had had the legal acumen to evince an *animus revertendi*, and not by any means on humanitarian grounds.

Fifty-five years ago the efforts of one Harrison to save unoffending grouse from slaughter at the hands of a noble Duke, "by waving his pocket-handkerchief and opening and shutting his umbrella, for the mere purpose of keeping the grouse away," was frowned upon by the Court of Appeal on the merely technical ground that he carried out his humanitarian attempts from a highway on which he had no right except to pass and repass, and that, therefore, in acting as he did, he was a mere trespasser (*Harrison* v. *Duke of Rutland* [1893] 1 Q.B. 142).

The last-named case is recalled by a recent episode in the Republic of Switzerland. Each November, it appears, wild duck from Northern Europe alight on Lake Constance to rest before continuing their migration to warmer climes. "According to an alleged privilege," says *The Times*, "granted centuries ago by the Bishop of Chur, the lakeside residents are allowed to shoot the birds on a day fixed by the local authorities." On the "appointed day" a police signal starts the massacre by "sportsmen in more than a hundred boats"; the shooting "lasts for about half an hour, during which time thousands of birds are killed."

On the appointed day last November two airmen, "whose intention, it is believed, was to save as many birds as possible," took off in their two aircraft and circled among the duck, causing them to fly away and escape the shooting. "As it was impossible," we read, "to charge them with saving the lives of the birds, they were charged with having flown over groups of people at a height below 100 feet." The defendants, who were each fined 200 francs, intend to appeal.

We venture to express the hope that in the appellate tribunal these gallant airmen may win for the duck where Mr. Harrison failed against the Duke. Let sturdy Swiss marksmen confine their target practice to the innocuous national sport of shooting at apples poised on the heads of little boys (themselves a species *ferae naturae*) and for the future leave sitting birds alone.

A. L. P.

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

INCOME TAX (CANADA): TIMBER EXHAUSTION ALLOWANCE

D. R. Fraser & Co., Ltd. *v.* Minister of National Revenue

Viscount Simon, Lord Macmillan, Lord Simonds, Lord Oaksey and Lord MacDermott. 13th October, 1948

Appeal from the Supreme Court of Canada.

The appellant company held licences to cut timber on certain Crown land in Alberta. For purposes of return of income for the year 1940–41 they deducted a sum as allowance for depletion of the timber in question at a specified rate. By s. 5 (1) of the Dominion Income War Tax Act, 1927, as amended in 1940, "income . . . shall . . . be subject to the following deductions: (*a*) The Minister in determining the income derived from . . . timber limits may make such an allowance for the exhaustion of the . . . timber limits as he may deem just . . ." The deduction claimed by the company was disallowed in their assessment to tax. The Minister affirmed the assessment, and the Exchequer Court at Edmonton and, on appeal, the Supreme Court, also upheld it. The company now appealed. (*Cur. adv. vult.*)

LORD MACMILLAN, giving the judgment of the Board, said that, taking the Act of 1927 (as amended) as it stood, s. 5, with its use of the word "may," in their lordships' opinion plainly conferred on the Minister a discretion to determine whether any given case was one for making any allowance at all. It did not limit his discretion to determining the extent of the allowance to be made. The discretion was a double one, namely, to decide whether there should be an allowance at all and, if yes, how much was to be allowed. Section 5 (1), before amendment, provided that "the Minister . . . shall make . . . an allowance for the exhaustion of the . . . timber limits." An alteration such as that from "shall" to "may" by an amending statute must be taken to have been made deliberately. With regard to whether the Minister had exercised on reasonable grounds his discretion not to make an allowance, he had clearly proceeded on the view that what was being exhausted was the timber belonging to the Crown which the company were licensed to cut, and that the only allowance for depletion which ought to be made was in respect of the sum which they paid for the privilege of cutting and acquiring the timber. For that depletion they had already received allowances in the past years to the extent of 100 per cent. The Minister was entitled to take that view, which represented no transgression of the bounds of his discretion. Appeal dismissed.

APPEARANCES: *S. Bruce Smith*, K.C. (of the Canadian Bar) and *Gahan* (*Blake & Redden*); *R. P. Morison*, K.C., and *Mackenna* (*Charles Russell & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

RENT RESTRICTION: FRESH EVIDENCE OF RATEABLE VALUE

Edward H. Lewis & Son, Ltd. *v.* Morelli and Another

Tucker and Asquith, L.JJ., and Harman, J. 9th November, 1948

Appeal from Denning, J.

The plaintiff landlords brought an action against the defendants for possession of a house in London. They conceded that the premises were within the Rent Restrictions Acts. The first defendant did not defend the action, but they failed in their action against the second defendant, because Denning, J., held that they were in the circumstances estopped from denying that they had granted her a weekly tenancy. She was accordingly a statutory tenant, and no order for possession against her was made. On this appeal, the landlords applied for leave to adduce fresh evidence that the rateable value of the premises was in fact such that they were not within the Rent Restrictions Acts, so that the finding that the second defendant was a statutory tenant must be wrong.

TUCKER, L.J.—ASQUITH, L.J., and HARMAN, J., agreeing—said that the fresh evidence could not be admitted, for to do so would be contrary to the practice of the court. It would result in an appellant's being allowed to take a point which had not only not been taken, but had been expressly disclaimed, in the court below, and in his then trying to establish that point by evidence which could have been discovered by the exercise of ordinary diligence before the trial. The evidence of rateable value, obviously relevant, could have been obtained with the greatest ease before the trial. The principle had been laid down by Scrutton, L.J., in *Nash* v. *Rochford Rural Council* [1917] 1 K.B. 384, at p. 393. Application refused.

APPEARANCES: *Fox-Andrews*, K.C., and *Rees-Davies* (*Burton, Yeats & Hart*); *Barry*, K.C., and *Martin Jukes* (*Cochrane and Cripwell*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

WILL: CONSTRUCTION: "ALL MY BLOODSTOCK": SHARES IN RACING HORSES

***In re* Gillson, deceased; Ellis *v.* Leader**

Lord Greene, M.R., Somervell and Evershed, L.JJ.
10th November, 1948

Appeal from a decision of Jenkins, J.

By his will, made on 4th February, 1943, the testator left a legacy of "all my bloodstock" to the trainer of his stud. At the date when the will was made, the testator was the owner of seven or eight thoroughbred horses including a bay colt, and after the date of the will he sold one half share in the colt, retaining the other half; the horse continued to remain part of his stud, being trained by the legatee. At the date of the will, the testator further had one fortieth share in a stallion which was managed by a committee, the testator's share entitling him to one free nomination of a mare to be served by the stallion. The stallion was not at the testator's stud nor was it trained by the legatee. The testator died on 3rd March, 1944, and the court was asked to determine whether the testator's shares in the colt and the stallion were included in the legacy of "all my bloodstock." Jenkins, J., held that the shares were not so included, and the legatee appealed.

The COURT OF APPEAL held that, on the proper construction of the legacy, the share which the testator retained in the colt was within the phrase "bloodstock," but the testator's share in the stallion was not covered by that phrase because that share was in the nature of an investment and the testator was, in that respect, a participant in a commercial syndicate rather than the part owner of a racehorse, particularly as the agreement concerning the stallion did not provide for any kind of exploitation of the stallion other than the right to nominate. Appeal allowed so far as relating to the testator's share in the colt.

APPEARANCES: *Charles Russell*, K.C., and *Sir Norman Touche* (*Ward, Bowie & Co.*, for *Rustons & Lloyd*, Newmarket); *John Sparrow* and *G. C. S. Dunbar* (*Ellis, Peirs & Co.*); *Geoffrey Cross* (*May, May & Deacon*); *Blackett-Ord* (*Lovell, White & King*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

PRACTICE NOTE

***In re* Gillson, deceased; Ellis *v.* Leader**

10th November, 1948

LORD GREENE, M.R., said that when appeals were brought to the Court of Appeal and there were several parties in precisely the same interest with precisely the same arguments who in the court below had been separately represented, it was the duty of the solicitors concerned to do everything possible to avoid unnecessary costs in the Court of Appeal. The practice had always been in such a case to allow only one set of costs, certainly where costs were charged on residue, for instance, or on a fund in which the persons interested were either absent or infants and, therefore, were not in a position to consent.

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law]

CHANCERY DIVISION

WILL: ACCRUER TO SHARES OF DECEASED BENEFICIARIES

***In re* Walter's Will Trusts; Stuart *v.* Pitman**

Jenkins, J. 5th November, 1948

Adjourned summons.

The testator W died in 1888, having by his will made in 1883 settled a trust fund of £20,000 Consols upon his twelve children, four sons and eight daughters, all named. After payments thereout to the sons, the trustees were directed to divide the residue into as many shares as the testator had daughters living at his death, and to appropriate one of such shares to each daughter. Each daughter attaining twenty-one or marrying with consent took a life interest in her share, and after her death it was to be held on trust for her issue as she should appoint and in default equally. But if there should be no issue to attain twenty-one, the share of such daughter or so much thereof as should not have been applied was to go over by way of accruer to the shares of the unmarried daughters in equal portions, and every addition to such share by way of accruer would be blended with the share to which it accrued. But if any daughter should die unmarried, her share or shares were, without prejudice to the previous trusts and after the death of such one or such survivor as the case might be, to be held on trust for the testator's three sons named, in equal shares. The residue was bequeathed to trustees to be applied for the benefit of the testator's minor children and daughters. There were two codicils which were not material. All the testator's children survived him but had now died. Six of the eight daughters died unmarried. The two who married, Mrs. L and Mrs. G, died in October, 1945, and February, 1947, respectively, both of them surviving all their brothers and unmarried sisters, but without leaving any issue. The principal question raised by the summons was how the shares of the two married daughters devolved in default of issue of either of them or of any of their sisters.

JENKINS, J., discussing the share of Mrs. L, who died in 1945, said that there were several competing views—(1) that the rule in *Lassence* v. *Tierney* (1849), 1 Mac. & G. 551, applied, and that, the initial gift being absolute, her estate was entitled to the share absolutely; (2) that the rule did not apply, the initial gift was not absolute, and the share fell into residue; (3) that all previous trusts having failed there was an intestacy; (4) that the trusts declared exhausted the whole beneficial interest, and in the events which had happened the share went to the estates of the testator's three younger sons. The same questions arose as to Mrs. G's share. The difficulty was caused by the fact that the testator had not provided for an event which had happened, the deaths of the married daughters without issue after the unmarried daughters had all died. It was contended that the accruer clause necessarily implied personal survivorship as a condition of participating in the accruer, and, if that view was correct, the case would depend on the application or otherwise of the rule in *Lassence* v. *Tierney*, and, failing its application, on the construction of the residuary gift. But the accruer was not to the daughters personally, but to the shares of the daughters, treated as appropriated to them. The existence of those shares did not depend, in his lordship's opinion, upon the daughters surviving the date of accruer. A daughter who had died could still be properly described as a daughter who had not been "married with such consent as aforesaid." If the accruer was to the shares of married daughters, to hold the contrary might deprive children of their shares by the accidental event of the failure of their mother to survive. The testator clearly contemplated that, subject to provision being made for his daughters and their children, if any, the fund should ultimately go to his three sons or their respective estates, and that was the scheme of the will except that the testator did not seem to have considered the possibility of all his daughters marrying and all or some of them having no children. He held, therefore, that both shares, including any accrued shares, accrued equally to the shares of the unmarried daughters, and ultimately to the estates of the three sons. The question whether the rule in *Lassence* v. *Tierney* applied did not arise.

APPEARANCES: *W. T. Elverston* (*Rowe & Maw*); *E. I. Goulding* (*Rowe & Maw*, for *Llewellyn & Hann*, Cardiff); *G. A. Rink* (*Radford, Frankland & Mercer*, for *Stanley Evans*, Manchester); *H. E. Francis*; *A. C. Nesbitt* (*Rowe & Maw*, for *Carson, Baillie, Johnston & Thom*, Belfast).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

WILL: CONSTRUCTION: DIVISION *PER CAPITA* OR *PER STIRPES*

***In re* Jeeves, deceased; Morris-Williams *v.* Haylett**

Vaisey, J. 10th November, 1948

Adjourned summons.

By her will made on 9th September, 1940, the testatrix directed that her residuary estate should be divided "equally between the daughters of my late brother Samuel . . . who are resident in America and who shall be living at the time of my decease and to Edith . . . the daughter of my sister Sarah Margaret," followed by a proviso that "if any of my said nieces shall have died in my lifetime . . . leaving issue living at the date of my decease . . . such issue shall take *per stirpes* and if more than one equally between them the share of my residuary estate which such deceased niece would have taken had she survived me and attained a vested interest." The niece Edith predeceased the testatrix, and on the testatrix's death, which took place on 23rd April, 1948, there were alive five daughters of the testatrix's brother Samuel and three daughters of her niece Edith. The court was asked to determine whether the residue had to be divided *per stirpes*, i.e., into two moieties, one to be divided between the daughters of Samuel and the other between the daughters of Edith, or *per capita*, i.e., into six equal portions, one for each of the five daughters of Samuel and one to be divided between the issue of Edith.

VAISEY, J., said that where there was a direction to divide, at any rate amongst persons of the same generation or standing in the same relationship to the testatrix, there was a *prima facie* presumption that the division was intended to be *per capita*. This presumption was displaced in the present case by the words of the will which indicated that the testatrix was thinking of her nieces not as individuals but as households and that she intended stirpital and not capital distribution.

APPEARANCES: *Wigan* (*Pontifex, Pitt & Co.*, for *Levick and Salwey*, Leominster); *J. A. Wolfe* (*Rowe & Maw*); *Elverston* (*Churchill, Clapham & Co.*' for *H. Vaughan, Vaughan & Co.*, Builth).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law]

KING'S BENCH DIVISION

CATCHMENT BOARD: LIABILITY FOR FLOODS

Smith and Others *v.* River Douglas Catchment Board

Morris, J. 15th October, 1948

Action tried by Morris, J.

The plaintiffs' predecessors in title entered into an agreement with the defendant catchment board which provided that, in consideration of a specified contribution by them to the cost of the work, the board should widen, deepen and make good the banks of a brook which was liable to overflow and flood the plaintiffs' land. After the work had been completed, with consequent improved drainage of the plaintiffs' land, breaches occurred in extremely wet weather in the banks of the brook, and the plaintiffs' land was damaged by the consequent flooding. The work done to the banks under the agreement increased the capacity of the brook and prevented overflowing which would otherwise have taken place, but, owing to the expense, the board were unable to construct as efficient a new bank to the brook as their engineer would have wished, and it was doubtful whether the new bank would be able to sustain an exceptional weight of flood water. The plaintiffs brought this action against the board, claiming damages for negligence and breach of contract for the flooding of their land. (*Cur. adv. vult.*)

MORRIS, J., said that to hold that the board, having decided to reconstruct the banks of the brook, were under a duty to the plaintiffs to construct such a bank as would not collapse under foreseeable conditions and to avoid taking any risk with regard to foreseeable contingencies would be to impose on them obligations in excess of those laid down in *East Suffolk Rivers Catchment Board* v. *Kent* [1941] A.C. 74. The board were accordingly not liable to the plaintiffs in negligence for not constructing so efficient a bank as might have been constructed at greater expense, or for constructing one unlikely to stand the strain of exceptional, though not unforeseeable, conditions. As for the claim in contract, the fact that the works undertaken by the board were such as they were empowered to do in their discretion under s. 34 (1) of the Land Drainage Act, 1930, did not prevent them from coming under a positive contractual duty to do that same work. However, they were not in breach of contract, since they had widened and deepened the banks of the brook as agreed; and they could not be said to have failed to "make good" those banks merely because they had constructed new banks less good than they might have been and than they required to be to meet exceptional strain. What they had done also did not constitute a failure to "maintain" the banks. In any event, the board's obligations under the contract did not amount to covenants running with the land of which the plaintiffs were entitled to take advantage under s. 78 (1) of the Law of Property Act, 1925.

APPEARANCES: *Gerrard*, K.C., and *Baucher* (*Ellis & Fairbairn*); *Youds* (*Norton, Rose, Greenwell & Co.*, for *A. H. Joliffe*, Preston).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ESTATE AGENT'S COMMISSION: PURCHASER WILLING TO COMPLETE

Bennett and Partners *v.* Millet

Hilbery, J. 3rd November, 1948

Action.

The defendant engaged the plaintiffs, estate agents, to sell his house, agreeing to pay them commission in the event of their introducing to him "a purchaser who is able and willing to complete the transaction." A minimum price of £7,500 was fixed. The estate agents introduced a purchaser who signed an agreement to buy the house "subject to contract" for £7,500 and paid a deposit of £750. The defendant then refused to go through with the transaction because of his inability to find other accommodation for his wife and himself. The estate agents therefore brought this action, claiming £170 commission.

HILBERY, J., said that the word "purchaser" could not be considered without reference to the words which followed it in the agreement, for they helped to define what the parties had meant by "purchaser." In common parlance "purchaser" did not necessarily mean a man who had completed a purchase. The use of the words "who is willing and able," etc., showed that the parties were referring to a person who had acquired the character of one able and willing to complete the transaction and become a purchaser in the strict sense. The service to be rendered by the estate agents here was that of introducing a person willing and able to purchase the house at the agreed price. The agents had performed that service, and they were entitled to their commission. Judgment for the plaintiffs.

APPEARANCES: *Sir John Cameron* (*Kinch & Richardson*, for *Pringle & Co.*, Redhill); *P. Back* (*Clutton, Moore & Lavington*, for *A. Rawlence*, Croydon).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ESTATE AGENT: SOLE AGENCY

E. Christopher & Co. *v.* Essig

Lewis, J. 11th November, 1948

Action.

On 29th August, 1947, the defendant gave the plaintiffs, a firm of estate agents, written instructions to sell, *inter alia*, his confectionery and tobacco business at Hampstead for £6,300, agreeing to pay them 5 per cent. commission on the purchase price if they procured a purchaser who actually signed a contract. The written instructions also stated that the whole transaction of sale was to be conducted by the plaintiffs "as sole agents for a period of three months on and from this date." A fortnight later the defendant sold the property through other estate agents for £5,700. The plaintiffs accordingly brought this action for damages for breach of contract whereby they were to be sole agents for three months. They contended that the consideration for the grant of sole agency was an implied promise by the plaintiffs that they would use their best endeavours to sell the property. It was contended for the defendant that there was no consideration because, by the instructions, the plaintiffs were under no obligation to do anything at all and an estate agent was not bound to look for a purchaser.

LEWIS, J., said that the premises concerned could be sold very readily. In his opinion the promise by the estate agents that they would use their best endeavours to sell the property was consideration for the granting of sole agency. Judgment for the plaintiffs for £150.

APPEARANCES: *J. H. C. Goldie* (*Millard & Potts*); *Maurice Lyell* and *John Shaw* (*Billinghurst, Wood & Pope*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

ADULTERY: NO FATHER NAMED IN BIRTH CERTIFICATE

Mayo *v.* Mayo

Mr. Commissioner Blanco White. 11th October, 1948

Husband's undefended petition for divorce.

The only evidence of adultery adduced by the husband was his wife's verbal admission to him that her pregnancy was due to her adultery and the absence of the name and profession of the father in the entry of the child's birth in the register, which entry bore the signature of the wife herself.

The COMMISSIONER said that *prima facie* the omission in the register was a mere failure to give certain information, and so could not be taken as an admission of adultery. The Births and Deaths Registration Act, 1874, however, required the registration of the birth of a child within forty-two days of the birth, and both father and mother must sign the register in the registrar's presence; and, by s. 7, " in the case of an illegitimate child no person shall, as father . . . be required to give information under this Act concerning the birth of such child, and the registrar shall not enter in the register the name of any person as the father of such child, unless at the joint request of the mother and of the person acknowledging himself to be the father of such child, and such person shall in such case sign the register, together with the mother." Thus, it was the mother's duty, unless the child was illegitimate, to enter the name and particulars of its father. It must not be assumed that she would fail to fulfil that duty. Either, therefore, she did not know who was the father and was unable to give the requisite particulars or she was admitting that the child was not her husband's. On either view, as *Frampton* v. *Frampton* [1941] P. 24 showed, that was an admissible admission of adultery. That admission, added to the verbal admission to the husband (not by itself sufficient), satisfied him (the Commissioner) that adultery had been committed. Decree *nisi*.

APPEARANCE: *Hogg* (*Herbert Baron*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

DIVORCE: NEW TRIAL: GROUNDS FOR REFUSAL

Tucker *v.* Tucker

Hodson and Pilcher, JJ. 14th October, 1948

Application under r. 36 (1) of the Matrimonial Causes Rules, 1947, for rehearing of a matrimonial cause, no error of the court being alleged.

In 1933 the wife applicant and the husband respondent were married in Jersey. In March, 1941, they separated. From August, 1941, onwards the husband paid the wife maintenance. In January, 1948, he petitioned for divorce on the ground of cruelty, alleging acts of violence since the early days of the marriage. In March, 1948, the wife completed the memorandum of appearance, stating that she did not intend to defend the petition but wished to be heard on the questions of costs and alimony. She was duly warned of the date of hearing. On 3rd June the case came on as an undefended cause, and a decree *nisi* was pronounced. On the 12th July the wife moved to set aside the decree *nisi* on the ground that the husband had not disclosed to the court that he had condoned the cruelty by sleeping with her from 11th to 16th December, 1947. She also set up delay in issuing to her a poor person's certificate until after the hearing.

HODSON, J.—PILCHER, J., agreeing—referred to *Durant* v. *Durant* (1824), 2 Add. 267; *Lester-Jones* v. *Lester-Jones* (1920), 123 L.T. 584, and *Winter* v. *Winter* [1942] P. 151, in the last of which, notwithstanding laches and deliberate inactivity of the respondent, it was held to be in the public interest that there should be a retrial so that the court should have before it what appeared to be the true facts, and said that he would consider the present case on the basis of *Winter* v. *Winter*, *supra*. Langton, J., had referred, at p. 154, to the power of the court to grant a rehearing if it thought that course desirable. The court therefore had to decide here whether it had material before it on which it was reasonable to suppose that an injustice might have been done assuming the truth of the wife's statements in support of her application. On a consideration of all the evidence, it did not appear that the wife had established that the husband had wrongly succeeded in his petition. It was not in the public interest, or, to quote Langton, J., in *Winter* v. *Winter*, *supra*, " desirable," to order a rehearing. Application refused.

APPEARANCES: *Boydell* (*Kinch & Richardson*, for *R. M. Galsworthy, Perrier & Co.*, St. Helier); *J. B. Gardner* (*R. J. A. Temple* with him) (*Cree, Godfrey & Wood*, for *Leather & Stevenson*, Aylesbury).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PRACTICE NOTE

DIVORCE: ALLEGATION OF ATTEMPTED SODOMY

Stokes *v.* Stokes

Hodson, J. 10th November, 1948

In her petition for divorce on the ground of cruelty a wife made no reference to attempted sodomy by her husband, although the examples of alleged cruelty given included sexual perversions. Among particulars and further and better particulars of certain of the allegations, however, a charge of attempted sodomy was made.

HODSON, J., said that a serious allegation like attempted sodomy, constituting a special ground for divorce, should be part of a petition, if necessary added to it by amendment. It was most undesirable practice to make a general charge of cruelty and depravity and then to allege a greater offence in the particulars of that general charge. Moreover, pleaders should make use of the word " sodomy," as used in the Matrimonial Causes Act, 1937, and not the Latin description of that particular perversion.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time :—

AGRICULTURAL WAGES (SCOTLAND) BILL [H.L.] [18th November.

To consolidate the Agricultural Wages (Regulation) (Scotland) Acts, 1937 to 1947, and so much of the Holidays with Pay Act, 1938, as enables a wage regulating authority to make provision for holidays and holiday remuneration for workers in agriculture in Scotland.

COAST EROSION BILL [H.L.] [16th November.

To amend the law relating to the protection of the coast of Great Britain against erosion and encroachment by the sea; to provide for the restriction and removal of works detrimental to navigation; to transfer the management of Crown foreshore from the Minister of Transport to the Commissioners of Crown Lands; and for purposes connected with the matters aforesaid.

Read Second Time :—

COLONIAL STOCK BILL [H.C.] [16th November.

DEBTS CLEARING OFFICES BILL [H.C.] [16th November.

EXPIRING LAWS CONTINUANCE BILL [H.C.] [18th November.

PREVENTION OF DAMAGE BY PESTS BILL [H.L.] [18th November.

Read Third Time :—

RAILWAY AND CANAL COMMISSION (ABOLITION) BILL [H.L.] [18th November.

HOUSE OF COMMONS

Read First Time :—

ADMINISTRATION OF JUSTICE (SCOTLAND) BILL [H.C.] [18th November.

To authorise the increase of the number of judges of the Court of Session to fifteen, and to amend the law relating to the sessions of that Court, to the appointment of the Lord Ordinary in Exchequer causes and to the office of sheriff substitute.

CINEMATOGRAPH FILM PRODUCTION (SPECIAL LOANS) BILL [H.C.] [17th November.

To make temporary provision for the lending of money to be employed in financing the production or distribution of cinematograph films; to provide for the taking over by a national corporation established for the purpose aforesaid of the assets and liabilities of National Film Finance Company Limited; and for purposes connected with the matters aforesaid.

LEGAL AID AND ADVICE BILL [H.C.] [18th November.

To make legal aid and advice in England and Wales, and in the case of members of the Forces legal advice elsewhere, more readily available for persons of small or moderate means, to enable the cost of legal aid or advice for such persons to be defrayed wholly or partly out of moneys provided by Parliament, and for purposes connected therewith.

LEGAL AID AND SOLICITORS (SCOTLAND) BILL [H.C.] [22nd November.

To make legal aid and advice in Scotland more readily available for persons of small or moderate means and to enable the cost of legal aid or advice for such persons to be defrayed wholly or partly out of moneys provided by Parliament; to establish a Law Society of Scotland; to amend the law relating to solicitors in Scotland; and for purposes connected with the matters aforesaid.

NATIONAL THEATRE BILL [H.C.] [18th November.
To authorise the Treasury to contribute towards the cost of a national theatre, and for purposes connected therewith.
PENSIONS APPEAL TRIBUNALS BILL [H.C.]
[17th November.
To amend the Pensions Appeal Tribunals Act, 1943.

Read Second Time :—
COLONIAL LOANS BILL [H.C.] [19th November.
IRON AND STEEL BILL [H.C.] [17th November.
JUDGES PENSIONS (INDIA AND BURMA) BILL [H.C.]
[19th November.

Read Third Time :—
PRIZE BILL [H.C.] [22nd November.
RECALL OF ARMY AND AIR FORCE PENSIONERS BILL [H.C.]
[22nd November.

In Committee :—
WIRELESS TELEGRAPHY BILL [H.C.] [18th November.

QUESTIONS TO MINISTERS

INFRINGEMENT OF FOOD REGULATIONS, WALES

Mr. G. THOMAS asked the Minister of Food if he is aware of the long delay that takes place in the Welsh Department of his Ministry in instituting legal proceedings against persons alleged to have infringed his Department's regulations; and whether, in view of the inconvenience caused, he will investigate into the reasons for the delay.

Dr. SUMMERSKILL: The need for avoiding undue delay in instituting legal proceedings is continually borne in mind by my Department. A careful watch is kept to see that cases are brought before the courts as quickly as possible. If my hon. friend will let me have particulars of any case in Wales in which he considers that undue delay has occurred, I shall be glad to look into it. [15th November.

TOWN AND COUNTRY PLANNING
DEVELOPMENT CHARGES (FACTORY EXTENSIONS)

Mr. HURD asked the Chancellor of the Exchequer if he is aware that the uncertainty about possible development charges under the Town and Country Planning Act is holding up necessary factory extensions on land held for this purpose; and if he will hasten a decision.

Sir STAFFORD CRIPPS: I hope to be able to make an announcement on this point very shortly. [16th November.

DEVELOPMENT CHARGE (MINISTER'S CERTIFICATE)

Mr. WALKER-SMITH asked the Minister of Town and Country Planning whether he intends to make provision for the hearing of representations, evidence or argument, in difficult cases referred to him for his certificate under s. 80 of the Town and Country Planning Act, 1947.

Mr. SILKIN: No. The burden of work arising from these cases makes it impossible to grant interviews as a matter of course, but where the position cannot readily be explained by letter my Department will grant an interview.
[16th November.

DEVELOPMENT VALUE (CLAIMS)

Mr. WINGFIELD DIGBY asked the Minister of Town and Country Planning whether he is aware of the slow progress that is being made in the preparation of claims for compensation for loss of development value, owing to the fact that surveyors are overworked at the present moment; and whether he will extend beyond 31st March the period during which claims will be accepted.

Mr. SILKIN: The Central Land Board have discretion to extend the time limit for a further three months. They inform me that they will exercise their discretion in favour of any owner of land with numerous claims, if efforts have been made by such owner to submit a reasonable number of claims by 31st March, 1949. Any appreciable further extension of time must inevitably lead to a postponement of payment of claims.
[16th November.

LAND (COMPULSORY ACQUISITION)

Mr. WALKER-SMITH asked the Economic Secretary to the Treasury whether he is aware that the provisions of s. 55 of the Town and Country Planning Act, 1947, entail hardship and anomaly upon owners of dead ripe land in respect of which a notice to treat was served between 6th August, 1947, and 1st July, 1948; and whether he will recommend preferential treatment in the claims to be made under s. 58 of the Act for the purposes of alleviating the hardship.

Mr. JAY: In preparing the Treasury scheme under s. 58 of the Act, special consideration will be given to cases of land compulsorily acquired at existing use value before the appointed day which would have qualified for a certificate under s. 80 had the claimant remained in ownership until after the appointed day.
[16th November.

BUILDING PLOTS (SALE)

Mr. JOHN E. HAIRE asked the Economic Secretary to the Treasury if he will give an assurance that owners of building plots purchased before 1st July, 1948, will, if they now sell at existing use value, receive the full amount of the compensation assessed under Pt. VI of the Town and Country Planning Act, 1947.

Mr. JAY: No. I can give no such assurance. I would take this opportunity of reinforcing the advice given to purchasers and sellers by the Central Land Board, namely, that they should adopt one of the three methods of sale set out in the Board's pamphlet "House 1," copies of which were recently made available in the Vote Office and Library. [16th November.

ATTORNEY-GENERAL'S FIAT

Mr. MARLOWE asked the Attorney-General whether he is aware that by virtue of s. 41 of the Army Act, persons subject to military law are frequently tried by court-martial on charges of statutory offences against the civil law without his fiat being first obtained, although the statute creating the offence requires the obtaining of such fiat before criminal proceedings can be taken; and under what authority the granting of the fiat in such cases is dispensed with.

The ATTORNEY-GENERAL: The requirement of the Attorney-General's fiat prior to the prosecution of certain offences is a procedural provision relating to the administration of the civil law in the civil courts, and s. 41 of the Army Act, whilst making certain civil offences also under military law, does not purport to attract the procedural provisions of the civil law in regard to such offences. The Attorney-General does not exercise any control over the jurisdiction of military courts or the administration of military law. [18th November.

TOWN AND COUNTRY PLANNING
DEVELOPMENT CHARGE ON AGRICULTURAL COTTAGES

Mr. DIGBY asked the Minister of Town and Country Planning whether, as agricultural cottages were exempt from development charge, he would give instructions that the charge need not be assessed on them for record purposes only, as it wasted time. Mr. SILKIN explained that agricultural cottages were not in law exempt, and that the charge was assessed not for record purposes but because it became payable if the cottage ceased to be reserved for the agricultural population.
[16th November.

ASSIGNMENT OF CLAIMS ON COMPENSATION FUND

Mr. DIGBY asked the Minister of Town and Country Planning whether he was aware that the assignment by sellers of land of claims on the £300,000,000 compensation fund was being discouraged by the Central Land Board and that executors would be unable to close an estate by selling a remaining parcel of land until 1953 unless the claim was assigned and asked if this practice would be stopped. In his reply, Mr. SILKIN stated that he approved the advice given in pamphlet "House 1." A sale at building value coupled with assignment of a claim was unfair to the purchaser, who had to pay a definite amount for the right to payment of an unknown amount and who had to pay for building value twice over (in the purchase price and in the development charge). No objections were raised to assignments as independent transactions unconnected with the sale of the land concerned. He did not propose to stop the practice and could not agree that unusual inconvenience was caused to executors in the case referred to. Everything possible was being done to clear up confusion on this matter.
[16th November.

ROYAL COMMISSION ON THE DEATH PENALTY

In answer to a question by Mr. WILSON HARRIS, the HOME SECRETARY said that the Government had decided to recommend the appointment of a Royal Commission to inquire whether liability under the criminal law in Great Britain to suffer capital punishment for murder should be limited or modified, what alternative punishment can be substituted and what are the changes in the law and the prison system involved by any alternative punishment. The terms of reference and membership would be announced in due course. [18th November.

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 2476. **Electricity** Arbitration Tribunal Rules, 1948. November 11.

No. 2471. **Local Land Charges** (Amendment No. 2) Rules, 1948. November 13.

No. 2485. **Trading with the Enemy** (Authorisation) (Japan) Order, 1948. November 16.

No. 2486. Trading with the Enemy (Custodian) (Amendment) (Japan) Order, 1948. November 16.

No. 2484. Trading with the Enemy (Enemy Territory Cessation) (Siam) Order, 1948. November 15.

COMMAND PAPERS (SESSION 1948-49)

No. 7563. **Legal Aid and Advice** Bill, 1948. Summary of the Proposed New Service.

HOME OFFICE

Supreme Court, Northern Ireland. Northern Ireland Winter Assize Order, 1948.

[The above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, W.C.2.]

TO-DAY AND YESTERDAY

LOOKING BACK

WHEN Titus Oates manufactured his great scare of the "Popish Plot" to murder Charles II, place the Duke of York on the throne, massacre all faithful Protestants and call in French and Irish aid to restore the Catholic religion by force, the first victim of his perjury and emotional engineering was Edward Coleman, a convert to Catholicism and secretary of the Duchess of York. He was charged with high treason and on 27th November, 1678, tried in the Court of King's Bench presided over by Lord Chief Justice Scroggs. He was a striking figure with his sad, sunken eyes and lean, pale features, set off by a black peruke. Although, when Oates had first seen him at the preliminary investigations of the "plot" before the Privy Council, he had not known him, he now swore to an association extending over the past three years and gave circumstantial details of his approval of the alleged schemes, though he prudently refrained from committing himself to particular dates. All was supported by Oates' fellow-perjurer, William Bedloe, and in the summing-up the jury were told: "You must find the prisoner guilty or bring in two persons perjured." The verdict was, of course, a foregone conclusion and Coleman was convicted. A few days later he was executed at Tyburn, asserting his innocence to the last and hoping in vain for a reprieve which, in the state of popular excitement, the King did not dare to grant.

LIPSTICK AND LIBEL

IT is reported that a young German woman lawyer has brought an action for defamation against a judge of the Hamburg Criminal Court on the ground that he criticised her for making up and painting her finger nails "during the present misery of Germany." The judgment, when it comes to be delivered, ought to make an interesting law report. The subject is not exactly fresh to legal consideration. As one might have expected, it has cropped up in the United States. In the Allegheny County Divorce Court recently, lipstick figured as evidence against erring husbands. This led the journalists to check the views of some of the Common Pleas Court judges. One said that he could only recall one instance of a woman thinking it worth while to try to divorce her husband because of lipstick on his handkerchief. Another judge said: "Girls will have their lipstick. Men will just have to find some way of destroying the evidence. Personally I never pay much attention to it anyway." Contrasting with the tolerant broadmindedness of the Bench was the opinion of a Tennessee senator who wanted to outlaw the use of lipstick by making it a felony punishable by $10,000 fine and/or ten years' imprisonment. He complained bitterly that "married men are condemned by their wives upon arriving home with lipstick on their collars and shirts, and courts are flourishing with divorce cases due to the evils of lipstick."

THE CRIME OF COSMETICS

THE senator's anguished proposal recalls that puzzling Bill alleged to have been introduced into Parliament in 1770 to enact "that all women of whatever age, rank or profession, whether maid or widow, who shall after this Act impose upon and seduce into matrimony any of His Majesty's subjects by means of scents, paints, cosmetics, artificial teeth, false hair, bolstered hips, high-heeled shoes, or iron stays, shall incur the penalties against witchcraft, and the marriage shall be declared null and void." The reference to the penalties against witchcraft, which had ceased to be a crime in 1736, casts some suspicion on the authenticity of this Bill. Moreover, other sources ascribe to the same year a judicial decree of the Parlement of Paris to the effect that: "Quiconque attirera dans les liens du mariage aucun sujet m^le de Sa Majesté, au moyen de rouge ou de blanc, de parfums, d'essences, de dents artificielles, de faux cheveux, de coton, de corsets de fer, de cerceaux aux jupes, de souliers à hauts talons ou de fausses hanches, sera poursuivi pour sorcellerie et le mariage sera déclaré nul et non avenu." It is rather mysterious and one would be inclined to ascribe it to an eighteenth century joke had not Mr. Reginald Hine in his delightful "Confessions of an Uncommon Attorney" assured us that on a shelf in a cupboard of the offices of Hawkins & Co., of Hitchin, with whom he began his legal career under articles, he once found, deep in dust, the draft of this very Bill. If it is still preserved it will dissolve the mystery.

NOTES AND NEWS

Honours and Appointments

The King has appointed Sir WALTER TURNER MONCKTON, K.C., to be Attorney-General of the Duchy of Cornwall.

The Lord Chancellor has appointed Mr. W. T. C. SKYRME to be Secretary of Commissions of the Peace in the place of Sir RUPERT HOWORTH, who has resigned; and the Hon. TREVOR ROBERTS to be Assistant Secretary of Commissions.

Mr. HENRY INCE NELSON, K.C., has been appointed a Commissioner of Assize on the North-Eastern Circuit.

Notes

An ordinary general meeting of The Royal Institution of Chartered Surveyors will be held on Monday, 6th December, 1948, at 5.30 p.m., when Mr. E. C. Strathon, F.R.I.C.S., will read a paper on "The Practical Aspects of Valuations under Pt. VI of the Town and Country Planning Act, 1947."

THE LAW SOCIETY'S INTERMEDIATE EXAMINATION

The Council of The Law Society have decided that where the prescribed books for the Intermediate Examination do not deal with new legislation, no questions shall be asked at the examination on such legislation.

It has also been decided that candidates will not be examined on obsolete legislation referred to in the prescribed books, unless such legislation is included in an edition of a prescribed book published since the legislation became obsolete.

COURT PAPERS

SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1948

COURT OF APPEAL AND HIGH COURT OF JUSTICE
CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON GROUP A

Date	Emergency Rota	Appeal Court I	Mr. Justice Vaisey	Mr. Justice Roxburgh
			Business as listed	*Witness*
Mon., Nov. 29	Mr. Farr	Mr. Reader	Mr. Hay	Mr. Reader
Tues., ,, 30	Adams	Hay	Farr	Hay
Wed., Dec. 1	Andrews	Farr	Adams	Farr
Thurs., ,, 2	Jones	Adams	Andrews	Adams
Fri., ,, 3	Reader	Andrews	Jones	Andrews
Sat., ,, 4	Hay	Jones	Reader	Jones

	Group A		Group B	
Date	Mr. Justice Wynn Parry	Mr. Justice Romer	Mr. Justice Jenkins	Mr. Justice Harman
	Non-Witness	*Witness*	*Non-Witness*	*Business as listed*
Mon., Nov. 29	Mr. Jones	Mr. Farr	Mr. Adams	Mr. Andrews
Tues., ,, 30	Reader	Adams	Andrews	Jones
Wed., Dec. 1	Hay	Andrews	Jones	Reader
Thurs., ,, 2	Farr	Jones	Reader	Hay
Fri., ,, 3	Adams	Reader	Hay	Farr
Sat., ,, 4	Andrews	Hay	Farr	Adams

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).